UNIFORM CONTRACT FOR MEMBER AGENCY PURCHASE OF TREATED WATER FROM THE SAN DIEGO COUNTY WATER AUTHORITY – CARLSBAD DESALINATION PROJECT

Vallecitos Water District

1. **Purpose and Intent.**

The San Diego County Water Authority ("Water Authority") has entered into an agreement titled "Carlsbad Seawater Desalination Project Water Purchase Agreement between the San Diego County Water Authority and Poseidon Resources (Channelside) LP dated December 20, 2012" ("Poseidon WPA"). The Water Authority also has entered into an agreement titled "Design Build Agreement for Product Water Pipeline Improvements Relating to the Carlsbad Seawater Desalination Project between the San Diego County Water Authority and Poseidon Resources (Channelside) LP dated December 20, 2012" ("Poseidon DBA"). Together the Poseidon WPA and the Poseidon DBA will provide new facilities for the production and conveyance of desalinated water to the Water Authority and for the purposes of this contract constitute and are referred to as the "Carlsbad Desalination Project." The Water Authority has entered into long term financing agreements in conjunction with the Carlsbad Desalination Project, and it also has undertaken improvements and modifications to its aqueduct system and the Twin Oaks Valley Water Treatment Plant for purposes of taking delivery of and incorporating desalinated water into its treated water supply system.

Under the Poseidon WPA the Water Authority has made a Minimum Annual Demand Commitment, as defined in the Poseidon WPA, of 48,000 acre-feet and is required to take delivery of, purchase, and pay for that amount of desalinated water to the extent it is produced and made available for delivery according to the terms of that agreement. In June 2011, the Water Authority board of directors adopted guiding principles for the Water Authority to make available to its member agencies up to 49 percent of the Minimum Annual Demand Commitment and provide the opportunity for member agencies to enter into uniform contracts to make firm commitments to individually purchase from the Water Authority treated water in designated amounts that represent a portion of the Minimum Annual Demand Commitment. In addition, the Water Authority has the option to take Additional Product Water Deliveries under the Poseidon WPA and has provided the member agencies the opportunity to acquire a portion of the additional water as it is acquired by the Water Authority up to a total quantity for all participating member agencies of 49 percent of the additional water. Pursuant to the guiding principles, the Water Authority working in cooperation with its member agencies has developed this and the other uniform contracts for member agency purchase of treated water in connection with the Carlsbad Desalination Project.

The parties intend that the purchase and payment obligations of the member agencies under the uniform contracts reasonably match the purchase and payment obligations of the Water Authority under the Poseidon WPA. Thus, for example, the parties intend that a contracting member agency will be responsible for payment if a member agency fails to take delivery of all or a portion of its Contract Quantity because of a reason other than a condition of its facilities.
that would come within the definition of an Excused Demand Shortfall under the Poseidon WPA in a manner similar to the Water Authority’s obligations for such payments. Similarly, contracting member agencies will share the benefit of Drought Shortfall Payments, if any, made under the Poseidon WPA should a failure to make deliveries occur in times of a water supply shortage. The parties acknowledge that the water provided by the Water Authority under the uniform contracts will be treated water from any source determined by the Water Authority at its sole discretion, and may be a blend of desalinated water and other treated water of the Water Authority, other treated water of the Water Authority without blending with desalinated water or, in some limited cases, direct delivery of desalinated water, and that such water will deemed to be delivered in equal monthly amounts.

2. **Parties.**

The parties to this contract are the Water Authority and the Vallecitos Water District ("Member Agency").

3. **Initial Term and Option to Extend.**

(a) This contract is effective on the date it is fully executed and will continue for an Initial Term until the earlier of either (a) 30 years following Commercial Operation as defined in the Poseidon WPA or the Expiration Date of the Poseidon WPA as defined therein, whichever is later, or (b) the date of early termination of this contract pursuant to section 10.

(b) If the Water Authority chooses to exercise its option to acquire the Carlsbad Desalination Plant pursuant to the provisions of the Poseidon WPA for transfer upon expiration of the term of that agreement, the Water Authority will offer to each Member Agency that has an unexpired contract on that date a new uniform contract for the Contract Quantity. At the request of a Member Agency the Water Authority may also consider in its sole discretion renegotiating an increase in a Member Agency’s Contract Quantity. It is the intent of the parties that the new contract will have a term of twenty years and provide price and water supply benefits to participating member agencies in recognition of their proportional contribution to the financing of the Plant during the Initial Term.

4. **Condition Precedent.**

Attainment of the Commercial Operation Date under the Poseidon WPA is a condition precedent to the obligations of the parties under this contract.

5. **Contract Quantity.**

(a) The Member Agency’s Contract Quantity is 3,500 acre feet of treated water per Contract Year, subject to paragraph (d) of this section and adjustment pursuant to paragraph (d) of section 6. In the event of an adjustment pursuant to section 6, Contract Quantity means the Adjusted Contract Quantity for the duration of the adjustment. As used in this contract, Contract Year has the same meaning as in the Poseidon WPA.
(b) The Total Contracted Quantity of water subject to uniform contracts, including this contract, is 6,000 acre-feet of treated water per Contract Year. If a member agency having executed a uniform contract subsequently chooses to early terminate its contract pursuant to section 10 or a member agency contract is terminated as a consequence of breach by the member agency, the Total Contracted Quantity will be reduced in the amount of that member agency’s Contract Quantity after making the contracted amount available in part or in whole, at the Water Authority’s sole discretion, to any other member agency having executed a uniform contract. The Total Contracted Quantity will be reduced in the amount of that member agency’s Contract Quantity less the amount committed to other contracted member(s) pursuant to this section.

(c) The Member Agency’s Contract Quantity and the Total Contracted Quantity are part of the Minimum Annual Demand Commitment of the Water Authority under the Poseidon WPA. In addition, under the Poseidon WPA the Water Authority has the option to take Additional Product Water Deliveries. With respect to Additional Product Water Deliveries, the Member Agency: will purchase Additional Product Water made available by the Water Authority according to the provisions of section 9: YES ☒ / NO ☐; waives any participation in the purchase of Additional Product Water: YES ☒ / NO ☐.

(d) Under the Poseidon WPA, the Water Authority has a right to make an elective decrease in the Minimum Annual Demand Commitment based on the performance testing prior to Commercial Operation of the desalination plant. If the Water Authority elects to reduce the Minimum Annual Demand Commitment pursuant to the Poseidon WPA, the Total Contracted Quantity will be reduced so that the reduced Total Contracted Quantity bears the same ratio to the reduced Minimum Annual Demand Commitment as the amount specified in subparagraph (b) of this section bears to 48,000 acre-feet, and the Contract Quantity of each member agency having a uniform contract will be reduced to maintain the ratios of their respective Contract Quantities and the Total Contracted Quantity. The Water Authority will give notice to each member agency of the reductions, and once given, the reduced quantities will be used for all purposes of this contract and the other uniform contracts.

6. Purchase and Delivery.

(a) The Member Agency will purchase and the Water Authority will deliver the Contract Quantity as monthly deliveries of treated water equal to one-twelfth of the Contract Quantity.

(b) Purchase and delivery of the Contract Quantity will commence on the first day of the calendar month following Commercial Operation of the Carlsbad Desalination Plan pursuant to the Poseidon WPA. For the first Contract Year of Commercial Operation the Contract Quantity will be one-twelfth of the Contract Quantity times the number of full months following Commercial Operation remaining in the Contract Year.

(c) Daily water orders will be subject to the Water Authority’s rules and regulations generally applicable to the ordering and delivery of treated water.
(d) If at any time the Water Authority reasonably determines that it will receive desalinated water pursuant to the Poseidon WPA in an amount less than the Minimum Annual Demand Commitment for a Contract Year based on the existence of an Uncontrollable Circumstance, Event of Default, breach, or other failure of performance of the Project Company under the Poseidon WPA, the Member Agency will purchase from the Water Authority and the Water Authority will delivery to the Member Agency an Adjusted Contract Quantity for that year in an amount determined by the following formula: \[ x = \frac{a}{b} \times \left[ \frac{b}{d} \times c \right] \]; where \( a \) is the Member Agency’s Contract Quantity, \( b \) is the Total Contracted Quantity, \( c \) is the amount of desalinated water the Water Authority reasonably expects to actually receive pursuant to the Poseidon WPA in that Contract Year, \( d \) is the Minimum Annual Demand Commitment and \( x \) is the Adjusted Contract Quantity. The purchase and delivery will be in monthly deliveries of treated water equal to one-twelfth of the Adjusted Contract Quantity. If an adjustment is made after the commencement of a Contract Year, the Adjusted Contract Quantity for the remainder of the Contract Year will take effect at the beginning of the next month following the Water Authority’s notice to the Member Agency of the adjustment under this paragraph.

(e) If at any time the Water Authority reasonably determines that it will receive less than the Total Contract Quantity or the sum of the Adjusted Contract Quantities in a Contract Year under the Poseidon WPA because of a relief from performance due to the existence of an Uncontrollable Circumstance, or because of a Project Company default, breach, or other failure of performance under the Poseidon WPA, the Water Authority’s obligation to deliver water will be reduced until deliveries to the Water Authority under the Poseidon WPA resume and the Water Authority reasonably determines that the basis for suspension no longer exists. To the extent water is delivered to it, the Water Authority will deliver and the Member Agency will purchase a reduced monthly quantity determined by the Water Authority based on the amount of desalinated water it receives and the proportion that the Member Agency’s Contract Quantity bears to the Total Contract Quantity or the sum of the Adjusted Contract Quantities.

(f) The Member Agency and the Water Authority have entered into a separate agreement for the design, construction, and operation of new connection facilities to the pipeline described in the Poseidon DBA that will allow for the direct delivery of desalinated water to the Member Agency. If the Water Authority is unable to directly deliver desalinated water to the Member Agency due to a shutdown of Water Authority facilities, the Water Authority is excused from performance of its delivery obligations for the duration of the shutdown; however, the Water Authority will provide make-up water during the Contract Year, or at a later period as agreed between the Water Authority and the Member Agency, in amounts equal to the quantity of desalinated water that would have been delivered had the shutdown not occurred. Also, the Water Authority, at its discretion, may deliver treated water through other connections to the Member Agency in lieu of interrupting delivery of desalinated water, which treated water deliveries will be deemed to be deliveries of desalinated water for all purposes under this agreement and for which payment will be made in the same manner as for direct delivery. Further, if desalinated water is available but the Member Agency is unable to accept direct delivery of desalinated water through the new facilities, it will accept delivery of treated water by the Water Authority through other connections to the Member Agency in lieu of direct delivery of desalinated water; in addition to payment of the amount applicable to direct delivery of desalinated water, such delivery will be subject to payment of the Transportation Charge, or an
equivalent charge, under the Water Authority rate structure in effect at the time of the delivery subject to the adjustments described in Section 8, paragraph (a)(2) and Exhibit B.

(g) The Water Authority’s obligation to deliver water will be relieved and the Member Agency’s obligation to purchase will be suspended for the duration of a Product Water Purchase Relief Event as defined in the Poseidon WPA.

(h) The Member Agency’s obligation to purchase water will be relieved and the Water Authority’s obligation to deliver water to the Member Agency will be suspended during the period of a Member Agency Water Purchase Relief Event, which for the purposes of this contract means the formal declaration by the Member Agency’s board of directors based upon the existence of a sudden, unpredictable event resulting in a condition closing all or a portion of the Member Agency’s treated water facility system and preventing the Member Agency from taking all or a portion of the Contract Quantity.


(a) The Contract Quantity will be considered as a source and supply of water independently owned and managed by the Member Agency in the application of all Water Authority ordinances, plans, programs, rules, and regulations.

(b) The Contract Quantity will be treated as a “local supply” pursuant to the Water Authority’s Water Shortage and Drought Response Plan and will be eligible for the Local Projects Development Adjustment under the Water Authority’s Supply Allocation Methodology, as either may be amended from time-to-time.

(c) For purposes of administering the ordinances, plans, programs, rules, and regulations described in paragraphs (a) or (b) of this section, to the extent that a Member Agency receives less than its Contract Quantity in an applicable yearly accounting period because of an authorized suspension of deliveries by the Water Authority under this contract, the Water Authority will apply the same considerations as for other local supplies that would be produced by other Member Agency projects, programs, or rights.

(d) Nothing in this subdivision is intended to limit the ability of the Water Authority to amend, replace, repeal, adopt, or re-adopt either the Plan or the Methodology, or another plan or methodology to allocate supplies in time of shortage or otherwise, provided that the Water Authority complies with paragraph (a) of this section. If the Water Authority amends, replaces, or repeals the Plan or the Methodology to eliminate or materially reduce the local supply benefit, the Member Agency may terminate this Contract as provided in paragraph (b) of section 10.

8. Price and Payment for the Contract Quantity.

(a) The price for the Member Agency Contract Quantity will be the sum of the Desalination Project Costs described in paragraph (1) (A) and (B). When payment of an adjusted Transportation Charge is required under paragraph (f) of section 6, the adjustments to Transportation Charge will be made as described in paragraph (2).
(1) Unless the circumstance described in paragraph (b) of this section has occurred, the portion of the unit price attributable to Desalination Project Costs will be determined and apportioned by the Water Authority on a per-acre foot unit price basis:

(A) For each acre-foot of the Contract Quantity delivered in a month the Member Agency will pay the Fixed Unit Price and the Variable Unit Price, plus any Direct Payments, determined for that month pursuant to Article 17 of the Poseidon WPA. For each Unexcused Demand Shortfall Unit attributed to the Member Agency the Member Agency will pay the Fixed Unit Price determined for that month pursuant to Article 17 of the Poseidon WPA. As used in this contract, an Unexcused Demand Shortfall Unit attributed to the Member Agency means any failure to take treated water equal to one-twelfth the Member Agency’s Contract Quantity unless the failure is due to a Member Agency Water Purchase Relief Event as defined in paragraph (g) of section 6.

(B) For each acre-foot of the Contract Quantity delivered in a month and for each Unexcused Demand Shortfall Unit attributed to the Member Agency the Member Agency will pay a unit price equal to (a) the monthly debt service payment amounts and amounts set aside in reserves pursuant to agreements made by the Water Authority for financing of the obligations of the Water Authority under the Poseidon DBA, including refinancing agreements, apportioned on a per acre foot basis over the Minimum Annual Demand Commitment under the Poseidon WPA; plus (b) the operation and maintenance costs (including without limitation reasonable reserves for repair or replacement) for the facilities that are the subject of the Poseidon DBA determined according to the Water Authority’s adopted budget for the fiscal year in which the price is to be paid apportioned on a per acre foot basis over the Minimum Annual Demand Commitment under the Poseidon WPA.

(C) For each acre-foot of the Contract Quantity delivered in a month and for each Unexcused Demand Shortfall Unit attributed to the Member Agency the Member Agency will pay for the reimbursement of its proportionate share of the Water Authority’s project oversight costs during the design, construction and commissioning of the Carlsbad Desalination Project prior to the date of Commercial Operation as described in Exhibit A.

(D) The components of the unit price for the Desalination Project Costs and for the Water Authority capital and operating costs related to the Carlsbad Desalination Project are shown on Exhibit A.

(2) When the Member Agency is required to pay transportation costs for treated water delivered in lieu of direct delivery of desalinated water pursuant to paragraph (f) of section 6, then in addition to the charges paid under paragraph (a)(1), for each acre-foot of the Contract Quantity delivered in a month the Member Agency will pay a unit price determined by the Water Authority based on an adjusted Transportation Charge, or an equivalent charge, under the Water Authority rate structure in effect at the time of the delivery, which will be calculated in such a manner to reflect only the proportion of costs of the desalinated water conveyance pipeline attributable to the Water Authority’s proportion of desalinated water deliveries after subtracting the amounts determined under paragraph (1)(B) paid by the all member agencies.
having uniform contracts as part of the unit price attributable to Desalination Project Costs. The adjustments will include an appropriate additional reduction to the account for the Member Agency’s payments under paragraph (1)(B) and an increase to account for chemical injection at the Twin Oaks Valley Water Treatment Plant to boost chloramines residual. The components of the adjustments to the Transportation Charge are shown on Exhibit B. Because the Member Agency pays the Desalination Project Costs in connection with treated water deliveries in lieu of direct deliveries of desalinated water, the Water Authority will not charge any other supply or treatment costs for those supplies.

(b) If the Water Authority acquires the Carlsbad Desalination Plant in accordance with the Poseidon WPA, the portion of the Carlsbad Desalination Project Costs that are determined under paragraph (1)(A) of paragraph (a) will be redetermined by the Water Authority board of directors based upon the full cost (including without limitation, capital, debt service, acquisition, operation, maintenance, administrative overhead, depreciation, reserves) of the Water Authority’s ownership, operation, and maintenance of the plant.

(c) In addition to the unit price determined according to subsections 1(A), (B), and (C), the Member Agency will pay an annual Administration Charge calculated in the Initial Contract Year. The Administrative Charge components are described in Exhibit A. The Administrative Charge will be Index Linked as defined in Article 1 of the Poseidon WPA and will be adjusted each Contract Year after the first full Contract Year. The Administration Charge will be apportioned and collected as an additional unit charge for each acre-foot of the Contract Quantity delivered in a month and for each Unexcused Demand Shortfall Unit attributed to the Member Agency.

(d) The Water Authority will rebate to the Member Agency a share of any Drought Shortfall Payments received by the Water Authority pursuant to the Poseidon WPA based on the ratio of the Member Agency’s Contract Quantity to the Minimum Annual Demand Commitment.

(e) If the amount of water received by the Water Authority pursuant to the Poseidon WPA is less than its Minimum Monthly Demand Commitment under that agreement, then the Member Agency’s Contract Quantity deemed delivered in that month will be reduced to reflect the ratio of the Member Agency’s Contract Quantity to the Minimum Annual Demand Commitment times the amount of desalinated water delivered to the Water Authority in that month.

(f) The administrative charge may include additional charges to recover additional costs paid by the Water Authority for Base Product Water Deliveries pursuant to the Poseidon WPA for the prior fiscal year that were not recovered in the cumulative payments of the unit price for that prior year, or credits to allocate the benefit of payments received by the Water Authority pursuant to the Poseidon WPA for the prior fiscal year.

(g) Nothing in this contract precludes the Water Authority from establishing or excuses the Member Agency from paying any other non-discriminatory fee or charge generally applicable to Water Authority member agencies, except that the Contract Quantity will not be used to calculate the Member Agency’s customer service or storage charges under the Water Authority’s service rules.
Authority rate structure in existence on the date of this contract or any similar future rate structure of the Water Authority.

(h) The Water Authority will determine and give written notice to the Member Agency of the actual unit price for the Contract Year of the Commercial Operation Date as soon as reasonably feasible after the Water Authority determines the prices in accordance with paragraphs (a) and (c) of this section. At the time of the written notice, the Water Authority will provide the Member Agency with a written description of the basis of the determination, including budget data and information. Within fifteen days thereafter, the Member Agency may dispute the determination by giving written notice to the Water Authority of the grounds for the dispute. The Water Authority and the Member Agency will meet in good faith to resolve the dispute within thirty days. The Member Agency will pay the price determined by the Water Authority until the dispute is resolved, and if a different price is mutually agreed as a result of the dispute process, the Member Agency may claim a refund. For each Contract Year following the Initial Contract Year, the Water Authority will determine and give notice to the Member Agency of the unit price for a Contract Year on or before September 1 of each year. The notice will be given in writing and include a brief description of the basis of determination consistent with paragraphs (a) and (c).

(i) The unit price for water deemed delivered in a calendar month is due on the 15th day of the following month in accordance with the Water Authority’s billing practices applicable to water delivery generally. The Administrative Charge is payable in twelve equal monthly installments due on the 15th day of each month. Delinquent payments are subject to the same policies, including provisions or payment of interest and penalties, established by the Water Authority for billing and collection of fees, rates, and charges generally.

(j) If the Water Authority received grants or other incentive payments from any federal, state, or local government agency to defray all or any portion of the Desalination Project Costs, the Water Authority will rebate to the Member Agency a share of any such grant or incentive payments based on the ratio of the Member Agency’s Contract Quantity to the Minimum Annual Demand Commitment.”


Additional Product Water will be made available to each member agency that has agreed to participate in the purchase of Additional Product Water according to paragraph (c) of section 5 in proportion to its Contract Quantity to the total Minimum Annual Demand Commitment if and when the Water Authority determines to take Additional Product Water pursuant to the Poseidon WPA. As it is received, the Additional Product Water will be delivered to each participating member agency as treated water at the same price paid by the Water Authority for that water under the Poseidon WPA; in addition the Member Agency will pay the Aqueduct Cost pursuant to paragraph (a) (2) of section 8 for each acre-foot of water delivered. Additional Product Water made available to the Member Agency will be treated as a local supply as provided in section 7.
10. Early Termination.

(a) If the Water Authority acquires the Carlsbad Desalination Plant pursuant to the Poseidon WPA, other than pursuant to the provisions for transfer upon expiration of the term of that agreement, the Member Agency will have 90 days after the date of such acquisition to terminate this contract by giving written notice to the Water Authority. The Member Agency will be deemed to have waived the provisions of this section if it does not deliver the written notice to the Water Authority within 90 after the date of acquisition.

(b) If the Water Authority amends, replaces, or repeals the Water Shortage and Drought Response Plan or Supply Allocation Methodology to eliminate or materially reduce the local supply benefit, the Member Agency will have 90 days after notice of the amendment, replacement, or repeal to terminate this contract by giving written notice to the Water Authority. The Member Agency will be deemed to have waived the provisions of this section if it does not deliver the written notice to the Water Authority within 90 days.

11. Entire Agreement.

This contract constitutes the entire understanding among the parties with respect to the matters set forth herein, and supersedes all prior or contemporaneous understandings or agreements among the parties with respect to the subject matter hereof, whether oral or written.


The covenants and obligations of each party constitute consideration for the covenants and obligations of the other parties and that the provisions of this contract cannot be severed one from the other without affecting the respective and mutual benefits to be obtained by the parties from enforcement of the contract as a whole.

13. Amendment.

Neither this contract nor any of its provisions may be waived, modified, amended, discharged, or terminated except by an instrument in writing signed by the party against which the enforcement of such waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in such writing. However, for purposes of this contract, the Poseidon WPA, the Poseidon DBA, and any agreements relating to the financing, construction, reconstruction, operation, or maintenance of the Carlsbad Desalination Project includes any amendments to those agreements approved and executed by the Water Authority, and no amendment of any of those agreements will be considered an amendment to this or any of the uniform contracts.


This contract constitutes a fully-negotiated agreement among commercially sophisticated parties, each assisted by legal counsel, and the terms of this contract shall not be construed or interpreted for or against any party hereto because that party or its legal representative drafted or
prepared such provision. Headings, titles and captions are for convenience only and shall not be used for the interpretation of the provisions of this contract.

15. **Controlling Law.**

This contract shall be governed by, and construed and interpreted in accordance with, the laws of the State of California, without giving effect to any choice-of-law or conflicts-of-laws rule or principle that would result in the application of any other laws.

16. **Notices.**

Any notice, approval, consent, waiver or other communication required or permitted to be given or to be served upon any party in connection with this contract shall be in writing. Such notice shall be personally served, sent by facsimile, sent prepaid by registered or certified mail with return receipt requested, or sent by reputable overnight delivery service, such as Federal Express, and shall be deemed given: (a) if personally served, when delivered to the Party to whom such notice is addressed; (b) if given by facsimile, when sent, provided that the confirmation sheet from the sending fax machine confirms that the total number of pages were successfully transmitted; (c) if given by prepaid or certified mail with return receipt requested, on the date of execution of the return receipt; or (d) if sent by reputable overnight delivery service, such as Federal Express, when received. Such notices shall be addressed to the party to whom such notice is to be given at the address specified below or as such party shall otherwise direct in writing to the other parties delivered or sent in accordance with this paragraph. The "copy to" notice to be given as set forth below is a courtesy copy only; a notice given to such person is not sufficient to effect giving a notice to the principal party, and a failure to give such a courtesy copy of a notice does not constitute a failure to give notice to the principal party.

To the Water Authority:  
San Diego County Water Authority  
4677 Overland Avenue  
San Diego, CA 92123  
ATTN: General Manager

With a copy to:  
San Diego County Water Authority  
4677 Overland Avenue  
San Diego, CA 92123  
ATTN: General Counsel

To the Member Agency:  
Vallecitos Water District  
201 Vallecitos de Oro  
San Marcos, CA 92069  
ATTN: Dennis Lamb, GM

With a copy to:  
Law Offices of Scott & Jackson  
16935 W. Bernardo Drive, #170  
San Diego, CA 92127  
ATTN: Jeffrey G. Scott, Esq.
17. **Cumulative Rights; Waiver.**

The rights created under this contract or by law or equity, shall be cumulative and may be exercised at any time and from time to time. Except as otherwise expressly provided in this contract or except passage of time specified by statute for limitation of actions, a failure, delay, or omission by any party in exercising any right, shall not be construed or deemed to be, or operate as a waiver of that right, and no single or partial exercise by any party of a right preclude any other or future exercise thereof or the exercise of any other right. No party may waive any right and no non-defaulting party may waive any breach by the defaulting party of any provision of this contract unless the waiver is in writing, and any waiver by any non-defaulting party of any breach by a defaulting party of any provision of this contract shall not operate as or be construed to be a waiver of any other breach of that provision or of any breach of any other provision of this contract. The failure of any party to insist upon strict adherence to any term of this contract on one or more occasions shall not be considered a waiver of any provision or any breach of any provision of this contract or deprive that party of the right thereafter to insist upon strict adherence to that provision or any other provision of this contract.

18. **No Third Party Beneficiaries.**

This contract does not create, and shall not be construed to create, any rights enforceable by any person, partnership, corporation, joint venture, limited liability company or other form of organization or association of any kind that is not a party to this contract. Nothing in this contract shall be construed to make the Member Agency a third party beneficiary of the Poseidon WPA.

19. **Execution in Counterparts; Facsimile Signatures.**

This contract may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon, provided such signature page is attached to any other counterpart identical thereto except for having an additional signature page executed by the other party. Each party agrees that the other parties may rely upon the facsimile signature of a party on this contract as constituting a duly authorized, irrevocable, actual, current delivery of this contract as fully as if this contract contained the original ink signature of the party supplying a facsimile signature.

20. **Time of the Essence.**

Time is of the essence of each and every provision of this contract.

21. **Proof of Authority.**

Each party shall deliver to the other party copies of such resolutions, certificates or written assurances evidencing authorization to execute, deliver, and perform this contract.
22. **Number, Gender.**

Where a word or phrase is defined in this contract, its other grammatical forms have a corresponding meaning. As used herein, and as the circumstances require, the plural term shall include the singular, the singular shall include the plural, the neuter term shall include the masculine and feminine genders, the masculine term shall include the neuter and the feminine genders, and the feminine term shall include the neuter and the masculine genders.

23. **Relationship.**

Nothing in this contract shall be deemed to constitute either party a partner, agent or legal representative of the other party. No liability or benefits, such as workers' compensation, pension rights or liabilities, other provisions or liabilities arising out of or related to a contract for hire or employer/employee relationship, shall arise or accrue to any party's agent or employee as a result of this contract or its performance. Each party is responsible for own acts and omissions, and the acts or omissions of its respective officers, employees and agents.

24. **Defense.**

The parties agree to cooperate to defend this contract by any person or entity that is not a party to this contract, provided, however, that each party shall bear its own attorneys' fees and costs, unless the parties otherwise agree.

25. **Assignment.**

Neither the Member Agency nor the Water Authority will assign any of its rights, interests, or obligations under this contract, except that upon a governmental reorganization the obligations of a party under this contract will be transferred to the successor agency.

26. **Limitation of Liability.**

The Water Authority shall not be liable to the Member Agency for any monetary damages of any kind or nature whatsoever, whether based on contract, warranty, tort (including negligence or strict liability), or otherwise, resulting from the failure to deliver the Contract Quantity. The Member Agency's exclusive remedy for the Water Authority's breach of this contract is a reduction in the payment of the unit price to the extent of the shortfall in delivery of the Contract Quantity.

27. **Force Majeure**

The performance of the Water Authority's obligation to deliver and the Member Agency's obligation to purchase the Contract Quantity is excused to the extent and for the duration that the performance is prevented by: acts or failure to act by any government agency or authority (other than the Water Authority or the Member Agency); natural disaster such as earthquake, fire, or flood; war; labor strike or lockout; riots, insurrection, rebellion, acts of the public enemy, acts of terrorism and sabotage; or other cause beyond the control of the party.
claiming the prevention of performance. A reduction of the Member Agency’s treated water demand due to weather, consumer consumption, availability of alternate supplies, or similar reason will not be grounds for relief under this section. In the event the performance of a party is prevented under this section, the performance of both parties will be excused until the performance is no longer prevented. The parties will reasonably cooperate to seek a restoration of the performance, however, neither party is obliged to expend resources to restore, repair, or replace facilities or services of the other party the damage or interruption of which is the cause of the prevention of performance. This section does not apply to circumstances within the scope of relief under section 6 of this contract.

28. **Execution and Effective Date.**

This contract is effective as of the last date of execution by the parties as shown below:

Water Authority

By: [Signature] Date: 8/20/15

Vallecitos Water District

By: [Signature] Date: 8/29/15
EXHIBIT A

Basis and Method for Carlsbad Desalination Project Costs

Plant Costs [Section 8, paragraph (a)(1)(A)]

- WPA Article 17.4 Capital Charges
  *(Debt Service Charge + Equity Return Charge)*
- WPA Article 17.5 Operating Charge
  *(Fixed Operating Charge + Variable Operating Charge)*
- WPA Article 17.6 Electricity Charge
  *(Fixed Electricity Charge + Variable Electricity Charge)*
- WPA Article 8.14 Poseidon Management Fee
  *(Annual Management Fee)*

Pipeline Costs [Section 8, paragraph (a)(1)(B)]

- WPA Article 9.11 Pipeline Debt Payment
  *(Annual Contracted Shortfall Payment WPA Appendix 10 Table 1.3)*

- Pipeline Operation and Maintenance
  *(Approved Water Authority Operating budget attributable to Desalinated Water Conveyance Pipeline maintenance)*

Capital Oversight Costs [Section 8, paragraph (a)(1)(C)]

Amortized capital cost of Water Authority construction management and design review related to WPA Article 7 Appendix 3, 4 and 5 and the Pipeline Design Build Agreement divided by 48,000 acre feet. (Annual cost spread over total WPA minimum annual commitment Article 9.4 (a).)

Administrative Charge [Section 8, paragraph (c)]

Total cost attributable to WPA administration and member agency purchase contract administration according to the approved Water Authority budget, divided by 48,000 acre feet.
EXHIBIT B

Calculation of Aqueduct Cost Transportation Charge Adjustment
[Section 8, paragraph (a)(2)]

Credit for Payment of WPA Article 9.11 Debt Payment: ($/AF)
(Annual Desalinated Conveyance Pipeline Debt Service Divided by Projected Total Member Agency Deliveries)

Credit for Payment of Water Authority Capital Oversight ($/AF)
(Annual amortized cost divided by Total Member Agency Deliveries)

Credit for Payment of Pipeline Maintenance Charge ($/AF)
(Annual O&M Budget attributed to Desalinated Water Conveyance Pipeline Divided by Total Member Agency Deliveries)

Cost for Chemical Injection to Boost Chloramines Residual $/AF
(Annual operating cost divided by 56,000 Acre Feet maximum annual desalinated water production)

NOTES
1 “Projected Total Member Agency Deliveries” means the total deliveries of Water Authority water to all Water Authority member agencies, except deliveries to member agencies through direct connections to MWD owned pipelines.

2 Amounts shown in parenthesis ($/AF) are credits against the Transportation Charge Amounts shown without parenthesis are additions to the Transportation Charge